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U.S. DISTRICT COURT
DISTRICT OF UTAH

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

A. McREYNOLDS, :

Plaintiff, : **MOTION FOR RULE 11 SANCTIONS**

vs. :

KENNETH F. WYNN, Director, : Case No. 2:05-CV-0122 DAK
UTAH DEPARTMENT OF :
ALCOHOLIC BEVERAGE CONTROL; : (Judge Dale Kimball)
JOHN DOE, Employee, :
UTAH DEPARTMENT OF ALCOHOLIC :
BEVERAGE CONTROL; **LARRY V.** :
LUNT, Chairman; **TED D. LEWIS**, :
Vice Chairman; **NICHOLAS E.** :
HALES, Member, **FRANK W. BUDD**, :
Member, and **MARY ANN MANTES**, :
Member, Utah Alcoholic :
Beverage Control Commission, :
Defendants. :

PLAINTIFF, A. McReynolds, by and through counsel, BRIAN M. BARNARD and JAMES L. HARRIS, Jr. of the Utah Legal Clinic, moves this Court pursuant to Fed. R. Civ. Pro. 11 to impose sanctions against defendants' counsel for their frivolous Motion to Require

Joinder. Doc. # 14; Memo, Doc. # 15. This motion is supported by a memorandum of even date.

SUMMARY OF ARGUMENT

Defendants have no basis in law or in fact to support their Motion for Joinder. Doc. # 14; Memo. Doc. #15.

Rule 11, Federal Rules of Civil Procedure provides in pertinent part:

(b) **Representations to Court.** By presenting to the court . . . a written motion, . . . an attorney . . . is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, --

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; . . .

The signing, filing and presentation of the Motion for Joinder containing the meritless assertions with no basis in fact or in law constitute a violation of Rule 11, Fed. R. Civ. Pro.

Defendants moved to require plaintiff to join as a party defendant, JOHN DOE, pursuant to Fed. R. Civ. Pro. 19. However, JOHN DOE is already joined as a party defendant having been so named and designated in the Complaint. Doc. # 1.

CONCLUSION

WHEREFORE, this Court should find a violation of Fed. R. Civ. Pro. 11 for the signing, filing and presentation of defendants' Motion for Joinder in this matter containing meritless claims. This Court should impose sanctions as per that rule including, if appropriate, an award of attorney fees and costs incurred by plaintiff in pursuit of this motion.

Appropriate sanctions should be imposed against defendants' counsel, Mark Shurtleff and Thom Roberts who presented the frivolous motion to the Court.¹

Dated this 24TH day of JUNE 2005.

UTAH LEGAL CLINIC
Attorneys for Plaintiff

by 

BRIAN M. BARNARD

¹ Fed. R. Civ. Pro. 11 (c)(2)(A) provides: Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

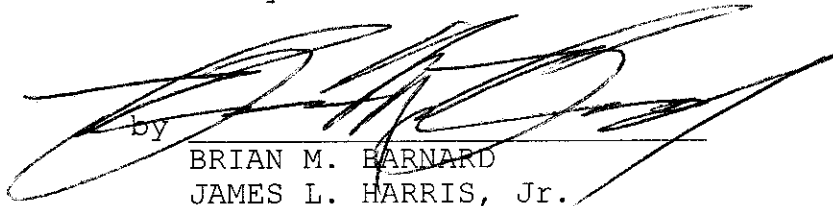
CERTIFICATE OF SERVICE

I hereby certify that I caused to be MAILED a true and correct copy of the foregoing MOTION FOR RULE 11 SANCTIONS to:

THOMAS D ROBERTS
ATTY. GEN OFFICE - PUBLIC AFFAIRS DIV
160 E 300 South Street FIFTH FLR
P.O. BOX 140857
SALT LAKE CITY, UT 84114-0857

on the 24TH day of JUNE 2005, postage prepaid in the United States Postal Service.

UTAH LEGAL CLINIC
Attorneys for PLAINTIFF


by
BRIAN M. BARNARD
JAMES L. HARRIS, Jr.

N.B.: Although a copy of this motion was served as set forth herein, as per Fed. R. Civ. Pro. 11, the original of the motion has not been filed with the Court and will not be filed until the expiration of twenty-one (21) days from service.

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